United States Court of Appeals

for the Second Circuit

APPENDIX

To Be Argued By
PHILIP PELTZ

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

75-1236

----------X

UNITED STATES OF AMERICA,

Plaintiff-Appellant

-v-

Docket No. 75-1236

ROSAURA MUNOZ DE GARCIA,

Defendant-Appellant.

----------X

Appeal From the United States District Court
for the Eastern District of New York

APPENDIX

PHILIP PELTZ
ATTORNEY for Appellant
32 Court Street
Brooklyn, New York 11201
852-4335

Carol Mellor,
On The Brief

PAGINATION AS IN ORIGINAL COPY

APPENDIX

TABLE OF CONTENTS

D. C. Form No. 100
CRIMINAL DOCKET 72CR1300

TITLE OF CASE

THE UNITED STATES

vs.

ROSAURA MUNOZ DE GARCIA

CLOSED

TRAVIA, J.

ASST. U.S. ATTYS

For U.S.:

For Defendant:
Philip Peltz
32 Court St., Bklyn, NY.
852-4335

Violation of narcotics

ABSTRACT OF COSTS	AMOUNT	DATE
Fine.		
Clerk.		
Marshal.		
Attorney.		
Commissioner's Court.		
Witnesses.		

CASH RECEIVED AND DISBURSED

NAME	RECEIVED	DISBURSED

DATE	PROCEEDINGS
12/7/72 (1)	Before Judd,J.-Indictment filed.
12-18-72	Before Travia J - Case called - Marked Off Calendar
1/4/73	Before [illegible] - Case called- Adjd to 1/5/73 at 2:00 P.M.
1-5-73 (2)	Notice of Appearance filed.
1-5-73	Before Travia J - Case called - Deft & counsel Philip Peltz present - Elena Cardenas interpreter present and sworn. Deft waives reading of the Indictment and enters a plea of not guilty - 30 days for Motions - Bail continued.
2-5-73 (3)	Notice of Motion filed with (4) Memorandum of Law, ret. 2-23-73. for Bill of Particulars, Inspection, suppression etc. A
2/23/73	Before TRAVIA, J.- Case called- Motion marked off with leave to renew.
3/14/73 (5)	Notice of Readiness for Trial filed.
	[illegible] 72 M 2062 inserted into CR file.

72CR1300

DATE	PROCEEDINGS
11/1/74 (7)	Memorandum scheduling pretrial conference for 11/26/74 at 9:45 A.M. filed
11/26/74	Before DOOLING,J.- Case called- Deft and counsel Philip Peltz present- Interpreter sworn- conference held and concluded- trial date set for 3/24/75
11/26/74 (8)	Memorandum to all counsel from Judge Dooling that case will commence on 3/24/75 at 10:00 A.M.
3-24-75 (9)	Affidavit of Actual Engagement filed by Philip Peltz.
3-24-75	Before BRAMWELL, J - case called & adjd to 4-28-75 for trial.
4/28/75	Before BRAMWELL,J.- Case called- Adjd to 4/30/75 for trial
4/30/75	Case called. Deft and Counsel present. Albert B. Boyne sworn as interpreter. Trial adjourned to 5/1/75 at 10:00 at request of Gvt.
4-30-75 (10)	Defts Jury Questions filed.
5-2-75	Before BRAMWELL, J - case called - deft & counsel P.Peltz present - Interpreter Albert Barron present - trial ordered and BEGUN - Selection of Jurors begun -Jurors selected and sworn - trial contd to May 5, 1975.
5/5/75	Before BRAMWELL,J.- Case called- Deft and counsel present-Interpreter sworn-Trial resumed - Hearing on motion to suppress begun-Motion to suppress denied-hearing concluded-Govt's application to dismiss count 2- motion granted Trial contd to 5/6/75 at 10:00 A.M.
5-6-75	Before BRAMWELL, J - case called - deft & counsel P.Peltz and interpreter Albert Barron present - trial resumed-Govt rests - defts motion for judgment of acquittal - motion denied - Trial contd to May 7, 1975 @9:30
5-7-75	Before BRAMWELL, J - case called - deft & counsel P.Peltz & Albert Barron-Boyne as Interpreter present - trial resumed - Defts motion for Judgment of Acquittal - motion denied - trial contd to May 8, 1975 at 10:30 A.M.
5/8/75	Before BRAMWELL,J.- Case called- Deft and counsel present-Interpreter sworn Trial resumed-Court charges jury-Jury retires to deliberate-Jury returns and renders a verdict of guilty on counts 1 and 3-jury polled-jury discharged-bail of additional $5,000.00 cash to be posted-sentence adjd without date
5/8/75 (11)	Voucher for expert services filed (interpreter)
5/8/75 (12)	By BRAMWELL,J,- Order of sustenance filed
5/8/75 (13) (14) (15)	Stenographers Transcript dated 5/5/75,5/6/75 and 5/7/75 filed
5-9-7 (16)	By BRAMWELL, J - Order filed releasing bail(to P.Peltz, Esq.)
5/12/75	Before BRAMWELL,J.- Case called Bail set at $50,000.00 surety bond- deft to post $1500.00 cash bail plus deed to house in Elmhurst
6-20-75	Before BRAMWELL, J - case called - deft & counsel P.Peltz present - deft is sentenced to imprisonment for a period of 5 years plus special parole term of 5 years on count (1) pursuant to 18:4208(a)(2) and 5 yrs.

B

72 CR-1300

CRIMINAL DOCKET

DATE	PROCEEDINGS
	on count 3 to run concurrently with sentence imposed in count one - deft advised of her rights to appeal - court appoints Philip Peltz as counsel for appeal - order appointing counsel filed.
6-20-75	By BRAMWELL, J - Order filed appointing counsel for deft.
6-20-75	Judgment & Commitment filed - certified copies to Marshal.
6-20-75	Notice of Appeal filed.
6-20-75	Docket entries and duplicate of Notice of Appeal mailed to Court of Appeals.
7/1/75	Stenographers Transcript dated 5/8/75 filed
7-2-75	Order received from the Court of Appeals that the Record on Appeal be docketed on or before July 10, 1975, in default of which the appeal shall be dismissed forthwith.
7-3-75	Voucher for expert services filed (deft DE GARCIA)
7/8/75	Record on appeal certified and mailed to court of appeals
7/9/75	Certified copy of Judgment and Commitment retd and filed- deft deliv to Women's House of Detention at Rikers Island
7/11/75	Acknowledgment received from court of appeal for receipt of record
7-16-75	Notice of Motion filed for a new trial pursuant to Rule 33 on the basis of newly discovered evidence, etc. (forwarded to Chambers
7-30-75	Govts Memorandum of Law filed in opposition to defts motion for a new trial and Govts affidavit in response to defts notice of motion filed .
8-1-75	Before BRAMWELL, J - case called - defts motion for new trial - motion argued and motion denied - submit Order on Notice (DE GARCIA)
8-7-75	Voucher for Expert Services filed
8-7-75	Certified copy of Judgment & Commitment retd and filed - deft delivered to Alderson, West Va.
8-7-75	By BRAMWELL, J - Order filed that motion vacating judgment of conviction is denied in all respects.
8-11-75	Notice of Appeal filed (from denial motion for new trial)
8-11-75	Docket entries and duplicate of Notice mailed to the Court of Appeals.
9-22-75	Stenographers transcript filed dated May 2, 1975.
9-22-75	Voucher for Expert Services filed.

EJB:DAD:jm
F.#725,465

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

ROSAURA MUNOZ DE GARCIA,

Defendant.

- - - - - - - - - - - - - - - - - - - X

72CR1300

INDICTMENT

Crim. No. _____
(T. 21, U.S.C., §§952(a), 841(a)(1), 955, 960(a)(2), and 968(a)(2))

DEC 7 - 1972

TRAVIA, J

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 16th day of November, 1972, within the Eastern District of New York, the defendant ROSAURA MUNOZ DE GARCIA, did knowingly and intentionally import approximately four thousand five hundred nineteen (4,519) grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance into the United States from Chile in violation of Title 21, United States Code, Section 952(a). (Title 21, United States Code, Section 960(a)(1), 952(a)).

COUNT TWO

On or about the 16th day of November, 1972, within the Eastern District of New York, the defendant ROSAURA MUNOZ DE GARCIA, did knowingly and intentionally bring and possess, contrary to Title 21, United States Code, Section 955, approximatdy four thousand five hundred nineteen (4,519) grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance, on board an aircraft, the said substance not then being a part of the cargo entered in the manifest for, or part of the official supplies of, said aircraft. (Title 21, United States Code, Section 960(a)(2) and Section 955)

COUNT THREE

On or about the 16th day of November, 1972, within the Eastern District of New York, the defendant ROSAURA MUNOZ DE GARCIA, did knowingly and intentionally possess with intent

1a

to distribute approximately four thousand five hundred nineteen (4,519) grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1))

A TRUE BILL

_____

FOREMAN

_____

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

2a.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA

- against -

ROSAURA MUNOZ DE GARCIA,

Defendant.

- X

IND. NO. 72 CR 1300

DEFENDANT'S JURY QUESTIONS

1. How much education do you have?

2. What schools did you attend?

3. Have you been in the Armed Forces? How long? Where?

4. Do you own or rent your home?

5. Have you read anything in any newspaper or magazine which would in any way prejudice you against the woman who is the accused in this case?

6. Do you have any bias, prejudice or preconceived ideas of any kind which would disable you from sitting fairly as a juror in this case where the defendant is charged with importation of ten pounds of cocaine?

7. Have you any personal feelings about the subject matter of this case which would interfere with your sitting fairly and impartially?

8. If the defendant should elect to testify in her own defense, she will do so with the aid of Mr. Baron-Boyne, Spanish interpreter--will this in any way prejudice you?

9. What is your prior jury experience?

Respectfully submitted,

PHILIP PELTZ.
Attorney for Defendant
32 Court Street
Brooklyn, New York 11201
Tel. (212) 852-4335

3a

VOIR DIRE

(Time noted 10:00 o'clock.)

THE COURT: Counsel, what do you want to do at this time?

MR. PELTZ: There was a motion made for a suppression hearing and perhaps --

THE COURT: What was the nature of the suppression hearing?

MR. PELTZ: It was about the contraband which is the subject of each count in the indictment.

MR. ADLERSTEIN: I would like to say that this involves --

This case, as you are aware of, involves a seizure of contraband pursuant to a search of someone who came into the United States, which I believe are the broadest possible circumstances under which the Government has the right to search someone and take something which is contraband away from them.

If Mr. Peltz wants this hearing, depending on how your Honor feels --

But, my witnesses are not here at this time.

I thought we were going to pick a jury this afternoon.

THE COURT: We can pick a jury and have a hearing in the morning.

MR. ADLERSTEIN: Could you wait until after

the hearing to swear in the jury?

I believe that the time of the swearing in of the jury should be after the hearing so that the Government wouldn't be prejudiced by any favorable ruling.

If you refrain from swearing in of the jury --

MR. PELTZ: I have no objection to that, your Honor.

THE COURT: I don't know if we can pick a jury before lunch, but I hope we can get started now.

MR. ADLERSTEIN: I have no objection to staying as long as it takes to pick a jury.

THE COURT: Okay, are we going to get them up?

MR. ADLERSTEIN: Will it be all right to wait to swear them in until after the suppression hearing?

THE COURT: We can do it that way if that is how you want it.

MR. ADLERSTEIN: Thank you, your Honor.

THE COURT: Okay, call the jury.

(The Clerk calling the jury on the telephone.)

THE COURT: Did you get a copy fo the defendant's jury questions?

MR. ADLERSTEIN: Yes, but I don't have it with me since I didn't know we would be covering it now.

But, Mr. Peltz has a copy.

THE COURT: I do not intend to ask the first four questions, but, I intend to ask the remainder of them.

MR. PELTZ: Your Honor, I don't know what your Honor's procedure or practice was, that is why I put the first four in writing.

Your Honor, aren't those reasonable background questions?

THE COURT: The questions I ask them will bring out the background as to occupation and as to what they do, that will bring out their backgrounds.

They tell me what they do and how long they have been doing it.

MR. PELTZ: What about education?

THE COURT: A man tells us what he does and you know what his education is.

MR. PELTZ: We had a jury a couple of weeks ago where a man was a bus driver and yet he had two college degrees.

THE COURT: So, what does that prove?

MR. PELTZ: If the defendant is making the determination --

THE COURT: Are you going to pick people based on their education?

MR. PELTZ: I would like to have the insight.

THE COURT: You do not want college degree people?

MR. PELTZ: I don't know if we will have that choice.

THE COURT: You know that the jury is supposed to represent the community.

You are telling me that you are picking them based on education.

MR. PELTZ: Well, I don't know until I hear.

THE COURT: Do you mean to say, if you look at a man and you hear he is educated you might not like him because he is educated and if you look at a man and he is not educated you might like him because he is not educated?

I don't understand this type of reasoning.

You can get an idea of his background from what he says, the way a person presents himself, and the things they say.

This will be indicative of this person's understanding, the way this person presents himself.

The fact that you get a bus driver who has two college degerees, is that a big deal because he's got two degrees.

What if he has a high school education?

MR. PELTZ: I think, your Honor --

THE COURT: Maybe he wasted his time getting those degrees if that is all he can do.

MR. PELTZ: I think that the defendant is entitled to have some background.

THE COURT: Surely, as you question them you will hear the background of these people.

I am sure you will hear the background but, to go into a figure of how far do you go in school and can you read and write --

Do you want me to ask if they can read and write?

MR. PELTZ: I would like to know how far they went in school.

THE COURT: Suppose a person is a clerk for the last 15 years for Con Edison or the telephone company, do you want me to ask them if they can read or write?

MR. PELTZ: No, but, I don't see what you find objectionable about the question.

THE COURT: Not that it is objectionable but, in normal questioning you get a good idea of this person and what the person's background is and what this person is in the community and whether or not this is the type of person you want.

You will know if this is the person you want just in normal questioning.

You can get this just from normal questioning.

MR. PELTZ: Judge, I consider those normal questions.

I consider those normal questions. But, I lack experience before your Honor.

THE COURT: It is not a normal question.

Just from various things an individual tells us you can get an idea of what this individual is and what his community standing is.

There is no question about it.

And, going into minute details as to different variations of this individual, it will give you that much more than just normal information about this person.

MR. PELTZ: Does your Honor permit counsel to make any inquiries directly to the jury?

THE COURT: No.

MR. PELTZ: I would respectfully request that your Honor ask the first four questions in addition to any other questions he does ask.

THE COURT: What is the difference if they were in the armed services?

MR. PELTZ: Well, we will have law enforcement

people as witnesses.

THE COURT: But, you are not asking that.

You are not asking that.

MR. PELTZ: Frequently, whether or not a person has been in the military does reveal something about the person.

THE COURT: You are not asking whether or not this person is involved in law enforcement through relatives or something else.

The fact that they're not in the armed forces doesn't give you an enforcement background.

MR. PELTZ: It gives me further insight into the person.

THE COURT: Why don't you ask me to ask them to tell me about law enforcement?

MR. PELTZ: I assume your Honor will.

THE COURT: You didn't put it down.

MR. PELTZ: I assume, your Honor, you'll ask it.

I never saw a trial in Federal Court where it wasn't asked.

THE COURT: Then, why do I have to ask if they are in the armed forces?

MR. PELTZ: Do you own or rent a home?

THE COURT: What bearing does that have?

Is your defendant in a tenant or landlord position where it would make a difference?

MR. PELTZ: It is a question which I think is important.

Everyone of the first four questions we are entitled to know.

As a right, we are entitled to have a jury of our peers.

THE COURT: You will get a jury of your peers, but I don't know what bearing it has whether or not they own or rent a home.

I don't know that what is before this Court is important to know whether they own or rent a home.

Please take it for granted that each of the jurors lives somewhere, whether they are a tenant or a landlord, that has no bearing on this type of situation.

You feel it does?

MR. PELTZ: I feel it may.

Judge, this is a very --

THE COURT: What do you want, landlords or tenants?

MR. PELTZ: With all due respect, I would make that determination on finding out.

THE COURT: I don't mind asking questions if

they have some validity and if they can be of some help in determining whether these people are acceptable or not.

But, whether they are rental or nonrental, is that type of factor important?

Maybe you feel it does matter.

I don't understand how it has any bearing on this.

MR. PELTZ: Your Honor, we will be getting into jurors from all over the Eastern District and in the Federal jury selection process --

THE COURT: If you want to get rid of renters, take all of your minorities off, that will get rid of the renters and the others will be more likely to own their own homes.

MR. PELTZ: That is not always so.

THE COURT: But, for the most part, it is so.

I know it is not always so but, for the most part it will be so.

I would say that 85 percent of the minorities are renters.

MR. PELTZ: All these minorities aren't and the questions becomes significant because of the 10 or 15 percent who may not be.

THE COURT: And, the 10 or 15 percent you wish?

MR. PELTZ: I cannot tell you right now what type of juror I want.

THE COURT: In the normal course of questioning of the jurors, the Court goes over a broad spectrum of the jurors picture and this spectrum will surely enable you to figure out whether or not this is the type of juror you wish.

You should be able to do this.

But, if you feel that a juror has to be questioned on every detail before you arrive at your determination; well, this is not reasonable.

MR. PELTZ: Your Honor is suggesting something that couldn't be further from counsel's intention.

I don't expect them to be questioned on every detail.

To get in such adversary questions, with your Honor --

We could have asked a dozen questions in the amount of time that we have been talking.

THE COURT: I am sure you will be able to pick your jurors.

I am sure that you'll be able to pick in the normal course of questions and through the broad spectrum that any judge puts to a jury.

This should be sufficient for you to have

some determination as to the juror's desirability, your undesirability, from your viewpoint.

MR. PELTZ: Would your Honor kindly --

Would you make the submitted questions part of the Court file?

THE COURT: No question about it.

It is part of the Court file, there is no question as to that.

It is part of the Court file. This is more here that you have?

MR. PELTZ: Perhaps, in selection, if your Honor doesn't cover it I can come up to side bar and tell you then.

MR. ADLERSTEIN: Can I ask a small modification be made as to Number 6?

THE COURT: Specific amounts?

MR. ADLERSTEIN: Yes, the Government intends to prove during the trial how much contents there was.

I think, at that time, if your Honor would not specify a figure it would be most wise.

THE COURT: I agree with that.

Anything further?

(No response.)

THE COURT: I will not specify the amount.

(Whereupon at this time the jury entered the

courtroom.)

(Time noted 12:20.)

THE CLERK: The jury panel is here.

Do you swear that the questions you are about to be asked about your qualifications to sit as jurors will be the truth and the whole truth so help you God?

THE JURY: We do.

THE CLERK: Be seated.

THE CLERK: Juror No. 1: Robert Lombardi.

THE CLERK: Juror No. 2: Linda Leyis.

THE CLERK: Juror No. 3: Silas Cohen.

THE CLERK: Juror No. 4: Patricia M. Pallome.

THE CLERK: Juror No. 5: Sal Starmauss.

THE CLERK: Juror No. 6: Joseph Selkowe.

THE CLERK: Juror No. 7: Milton R. Warren.

THE CLERK: Juror No. 8: Richard Mullen.

THE CLERK: Juror No. 9: Florence Kinstrey.

THE CLERK: Juror No. 10: James T. Sullivan.

THE CLERK: Juror No. 11: Doris Flrney.

THE CLERK: Juror No. 12: Miltie Pettersson.

THE COURT: Ladies and gentlemen of the jury and members of the jury panel:

The case before the Court is the United States of America versus Rosaura Munoz De Garcia who is the defendant.

Now, I am going to ask the jury panel, the jurors in the back and the panel seated in the Court a few questions.

If two of these questions are yes you will raise your hand.

Now, are you personally acquainted with the defendant, if you are please stand?

(No response.)

THE COURT: Are any of you acquainted with the defendant or related to her by blood or marriage or any of your immediate family related to her in any kind of way?

If the answer to that question is yes please raise your hand.

I take it that the answer is no, the defendant may be seated.

Now, her attorney is Mr. Peltz and the attorney for the United States is Mr. Adlerstein.

You may be seated, gentlemen.

THE COURT: I will ask the entire panel again, do you know or are you related by blood or marriage to counsel for the Government or to counsel for the defendant?

If the answer is yes, please raise your hand?

(No response.)

THE COURT: And, has anybody on the entire panel have one of the lawyers in this case acting as your attorney in any of your cases or any in your immediate family or close friends, to your knowledge?

If the answer is yes, please raise your hand?

(No response.)

THE COURT: I take it the answer is no.

Does anyone in the panel know the U.S. attorney, David Adlerstein?

If you do, please raise your hand?

(No response.)

THE COURT: Now, the indictment which is before the Court is in three counts and Count 1 is:

On or about the 16th day of November, 1972, within the Eastern District of New York the defendant Rosaura Munoz De Garcia knowingly and intentionally imported approximately four thousand grams of cocaine, a Schedule II narcotic drug controlled substance into the United States of America from Chile in violation of Title I, U.S. Code 695 281 916 980 (A) (1.)

THE COURT: And, count 2 is:

On or about the 16th day of November, 1972, within the Eastern District of New York, the defendant Rosaura Munoz De Garcia, did knowingly and intentionally bring and possess, contrary to Title 21,

United States Code, Section 955, approximately four thousand five hundred nineteen grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance, on board on aircraft, the said substance not then being a part of the cargo entered in the manifest for, or part of the official supplies of, said aircraft. (Title 21, United States Code, Section 960(a)(2) and Section 955.)

And, Count 3 is:

On or about the 16th day of November, 1972, within the Eastern District of New York, the defendant Rosaura Munoz De Garcia, did knowingly and intentionally possess with intent to distribute approximately 4,519 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, SEction 841(a)(1).)

Now, is there anyone here who feels that they cannot fairly sit and impartially judge as a juror in this case?

If there is anyone, please raise your hand.

If there is anything about this case that causes a problem, please tell me at this time.

Mr. Robert Lombardi.

MR. LOMBARDI: Yes.

THE COURT: Mr. Lombardi: tell us what you do.

MR. LOMBARDI: I am a telephone installer. I install telephones.

THE COURT: Who do you work for?

MR. LOMBARDI: New York Telephone Company.

THE COURT: How long have you worked for the New York Telephone Company?

MR. LOMBARDI: I have worked for the New York Telephone Company for 12 years.

THE COURT: Are you married?

MR. LOMBARDI: No.

THE COURT: Have you ever been on a grand jury or on any jury on any court previously?

MR. LOMBARDI: Yes.

THE COURT: Which court?

MR. LOMBARDI: Right here.

THE COURT: This criminal court?

MR. PELTZ: I didn't hear.

THE COURT: He has been on a jury prior to this case in this court.

In a criminal or in a civil case?

MR.LOMBARDI: In a civil case.

THE COURT: Did the jury deliberate?

MR. LOMBARDI: Yes, the jury did deliberate.

THE COURT: Now, if a Drug Enforcement agent were to testify in this case would you consider his

testimony the same as you would any other witness who came before the Court?

MR. LOMBARDI: yes.

THE COURT: Have you ever had an unfortunate experience with a police officer?

MR. LOMBARDI: No.

THE COURT: Now, this involves the drug cocaine, is there any reason you know of why you cannot sit on the jury in this case and be a fair and impartial juror?

MR. LOMBARDI: No.

THE COURT: Do you feel you can sit and be a fair and impartial juror?

MR. LOMBARDI: Yes.

THE COURT: Do you have any close friends or relatives who are policement or drug enforcement agents?

MR. LOMBARDI: Yes.

THE COURT: Will you tell us?

MR. LOMBARDI: I have a brother-in-law who is a police officer.

THE COURT: Are you very close to him?

MR. LOMBARDI: No.

THE COURT: Do you see him often?

MR. LOMBARDI: No.

THE COURT: Have you read anything in the newspapers or magazines which would in any way

prejudice you against the woman who is the accused in this case?

MR. LOMBARDI: No.

THE COURT: Do you have any bias or prejudice or preconceived ideas of any kind which will disable you from sitting fairly as a juror in this case where the defendant is charged with the importation of cocaine?

MR. LOMBARDI: No.

THE COURT: Have you any personal feelings about the subject matter of this case which would interfere with your sitting fairly and impartially?

MR. LOMBARDI: No.

THE COURT: If the defendant should elect to testify on her own defense she would do so with the aid of Mr. Barenboim standing up, he is a Spanish interpreter, would that in any way prejudice you?

MR. LOMBARDI: No.

THE COURT: Thank you very much.

Juror No. 2, Miss or Mrs?

JUROR NO. 2: Mrs.

THE COURT: And what do you do?

JUROR NO. 2: I am a worker at Maimonides.

THE COURT: How long have you worked there?

AFTERNOON SESSION (2:00 p.m.)

MR. PELTZ: Judge, so the record is clear, I haven't withdrawn my questions, but I am accepting your Honor's denial.

THE COURT: Do you feel that you can judge these people or consider them?

MR. PELTZ: Candidly, I feel --

THE COURT: If I ask someone who is retired, where did you go to school -- ridiculous.

MR. PELTZ: Yes.

THE COURT: I think you get into these questions and people don't like to speak up because somebody is going to feel badly because the person next to them is a college graduate and he only got a sixth grade education in school.

I don't want to get into that type of personal questioning. It is the general background that I want to get but I cannot get into these things.

If you do, people are not happy.

I know you don't care, but I care and I would rather not embarrass people by going into details of their background which aren't necessary for what you are doing.

If you have some who are college graduates and others who are not, it is not that he has two years

of education and the other has 20 years of education. This is why I did not go into it.

What do you have to say?

MR. PELTZ: I appreciate your Honor's position and I can see where it could be ticklish.

THE COURT: That is why I don't go into education like that.

MR. PELTZ: A lot of questions of the jury do appear to be prying and personal occasionally, and embarrassing. But, I remember a witness where we did not know the juror was illiterate until after the panel was selected.

THE COURT: Isn't the defendant entitled to a fair cross-section of his peers?

If the defendant is illiterate --

MR. PELTZ: That very well may be.

THE COURT: The Government is first.

MR. PELTZ: O.K.

MR. ADLERSTEIN: Number four, your Honor.

MR. PELTZ: I will take Number 7 and Number 12.

THE COURT: All right.

(Sidebar concluded.)

THE COURT: Number 4 and Number 7 and Number 12 return downstairs to the jury room, please.

Thank you.

Exhibit 3.

(Documents referred to were received and marked Court's Exhibits 2 and 3 respectively.)

THE COURT: Okay, thank you.

Bring in the jury.

(Jury enters courtroom at 10:47 a.m.)

THE COURT: Good morning, ladies and gentlemen, at this time I will give you the Court's charge in this case.

Mr. Foreman and ladies and gentlemen of the jury, we come now to the final stage of the proceedings. The Court will now charge you on the law to be applied to the facts in the case.

As you may recall, I initially gave you a pre-charge as to the manner in which the case would be presented to you. I told you that most of the evidence in the case would come in the form of the testimony of witnesses, and that you would pay special attention to the manner in which the witnesses testified.

I believe I also instructed you that you would be the judges of the facts in the case, that being your sole provence, and that your recollection of the facts after having heard all of the evidence in the case -- the testimony of witnesses and the

documentary proof -- was to control the determination of the issues.

Likewise at that time I told you that I would be the judge of the law. This has not changed at this stage of the proceedings. I will not review the facts in this case to you because I am certain that with summations by the attorneys there is no need for the Court to review the facts. In any event, if you find that there is some fact that you may have forgotten or don't recollect, or you can't agree with each other in your deliberations, you can have it read back from the record, and that will, I am sure, refresh your memory.

In any event, I am the judge of the law. You must accept what I say to be the law in this case.

Now, the attorneys have been permitted by the Court and by the rules to make opening statements and summations to you. Under no circumstances are the statements they have made by way of opening or by way of summation to be taken as evidence. However, the Court and the law does permit you to take the arguments that they have proffered before you and weigh those arguments. And if you agree with what they have said on either side of the case, you may

use those arguments in your deliberations and in discussing the case with each other, and try to convince one another as to what the final determination shall be with reference to the deliberations at hand.

If you feel that the arguments are not commensurate with the testimony and the proof in the case, you may disregard them. The arguments are not evidence. You need not weigh them. However, there are times when the arguments of the attorneys will give you an insight as to something you may have missed, and you may discuss that portion of it if you so desire.

Now, of course, I also said to you that during the trial the Court would be the judge of the law. Likewise, as to motions which at times we had at a sidebar, as you may recall. That was not for the purpose of keeping any of the proof from you, but were matters of law that were discussed between the attorneys and the court itself and should not have come before you. In any event, if you feel that you have discovered by some stretch of your imagination what this Court thinks as to either some of the testimony or the case itself, you should remove that from your

mind because I tell you here and now I have come to no conclusion in this case nor have I indicated to you in any way whatsoever what my feeling is in reference to the facts in the case or with reference to the guilt or innocence of the defendants. That is your province and your job. You should not try to weigh what you believe the Court's impression may be.

You must understand that the lawyers who appear before you are advocates. They are advocating the best case they can for the parties they represent, and they have a right to exercise as much forcefulness as they desire in their questioning or otherwise in presenting their case. I saw this because this is within the framework of the ordinary trial.

Of course you know by this time that this case has come before you by way of an indictment presented by a Grand Jury sitting in this Eastern District. That indictment charges the defendant with the two counts I shall now read to you. Remember, the indictment is merely an accusation, merely a piece of paper. It is not evidence and is not proof of anything.

In determining the facts, the jury is reminded

that before each member was accepted and sworn to act as a juror, he was asked questions regarding his competency, qualifications, fairness and freedom from prejudice or sympathy. On the faith of those answers the jury was accepted by the parties. Therefore, those answers are as binding on each of the jurors now as they were then and should remain so until the jury is discharged from consideration of this case.

You cannot decide that you do not like the sections of the law that I will quote to you or any other part of the charge. You have the obligation of accepting the law as I charge it, just as I have the obligation of accepting your findings of fact in your ultimate verdict as to the guilt or innocence of each defendant as to each charge.

It lends for predictability and stability if Judges throughout the country in types of charges such as this, charge uniformly or substantially so, and that juries accept it. It would be unfair for you to decide this case on your own notions on what the law should be, and another jury decided on their own notions on what the law should be.

That is why the obligation is a firm one and

one that you should understand.

Now, the indictment, count 1 reads:

"On or about the 16th day of November 1972 within the Eastern District of New York the defendant Rosaura Monoz De Garcia did knowingly and intentionally import approximately 4,519 grams of cocaine hydro chloride, a Schedule II narcotic drug controlled substance into the United States from Chile in violation of Title 21 United States Code Section 952 (a) and Title 1 United States Code Section 960 (a) (1) and 952 (a)."

The other count which is count 3 of this indictment reads that:

"On or about the 16th day of November within the Eastern District of New York, the defendant Rosaura Munoz De Garcia did knowingly and intentionally possess with the intent to distribute approximately 4,519 grams of cocaine hydro chloride, a Schedule II narcotic drug controlled substance. This is in violation of 21 United States Code Section 841(a)(1)."

When you go into the jury room to deliberate I will let you take with you the two counts of the indictment which you are to deliberate on and you can use those in your deliberations.

Now, Count 1 of the indictment is based on 21 United States Code Section 952(a) and 21 United States Code Section 960(a)(1). Title 21 Section 952(a) of the United States Code reads in part as follows:

"It shall be unlawful to import into the Customs territory of the United States (but within the United States), or import into the United States from any place outside thereof, any controlled substance in Schedule I or Schedule II of subchapter 1 of this chapter, or any narcotic drug in Schedule III, IV or V of subchapter 1 of this chapter."

You are instructed as a matter of law that cocaine hydrochloride is a Schedule II narcotic drug controlled substance.

Title 21 of the United States Section 960(a)(1) sets out the penalty for the Title 21 United States Code Section 952(a). The jury need not concern itself with the penalty. That is the exclusive province of the Court.

The essential elements of count 1, each of which the Government must prove beyond a reasonable doubt are:

First, that on or about November 16, 1972 the defendant brought a quantity of cocaine hydro chloride into the United States from abroad.

And, second, that the defendant knew that the substance that she was bringing into the United States was cocaine hydro chloride or some other illicit drug.

And, third, that the defendant understood that she was acting illegally.

I stated before, the burden is always on the Government to prove beyond a reasonable doubt every essential element of the crime as charged.

(Cont'd on next page.)

Count 2 of the indictment is based upon -- that should be count 3. Count 2 you are not to consider. It is not part of the case which you are to consider in any fashion at all.

Count 3 of the indictment is based on Title 21 of the United States Code Section 841(a)(1) which reads in pertinent part as follows:

"It shall be unlawful for any person knowingly or intentionally to possess with intent to distribute a controlled substance ..."

You are instructed as a matter of law that cocaine is a controlled substance. Count 3 of the indictment charges that the defendant, Rosaura Munoz De Garcia, did knowingly and intentionally possess with intent to distribute cocaine, a Schedule II controlled substance.

The essential elements of this offense, each of which the Government must prove beyond a reasonable doubt are:

First: That the defendant, Rosaura Munoz De Garcia, possessed cocaine, a Schedule II controlled substance on or about the 16th day of November 1972; and

Second: That the defendant Rosaura Munoz

De Garcia, did so possess with a specific intent to distribute cocaine, a Schedule II controlled substance; and

Third: That the defendant, Rosaura Munoz De Garcia, did so knowingly and intentionally.

As stated before, the burden is always on the Government to prove beyond a reasonable doubt every essential element of the crime charged.

Bear in mind the following definitions in considering the essential elements of the crimes charged.

"Possession:"

The law recognizes two kinds of possession: Actual possession and constructive possession. A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has the power and the intention, at a given time, to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

You may find that the element of possession as that term is used in these instructions is present

if you find beyond a reasonable doubt that the defendant had actual or constructive possession.

"Knowingly:" An act is done knowingly if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

The purpose of adding the word "knowingly" was to ensure that no one would be convicted for an act done because of mistake, or accident, or other innocent reason.

"Importation" defined:

"Importation" is defined as the act of bringing goods and merchandise into the country from a foreign country.

Definition of specific intent:

The offense charged in count 3 in this case, to wit, that the defendant Rosaura Munoz De Garcia did knowingly and intentionally possess with intent to distribute cocaine, a Schedule II controlled substance, is a serious offense which requires proof of specific intent before a defendant can be convicted.

Specific intent, as the terms implies, means more than the general intent to commit the act. To establish specific intent, the Government must prove

that the defendant knowingly did an act which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case.

Intent ordinarily may not be proved directly because there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer the defendant's intent from the surrounding circumstances.

You may consider any statement made and act done or omitted by a defendant, and all of the facts and circumstances in evidence which indicates his state of mind. It is ordinarily reasonable to infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

Where a defendant has offered evidence of good general reputation for truth and veracity, or honesty and integrity, or as a law-abiding citizen, the jury should consider such evidence along with all the other evidence in the case.

Evidence of a defendant's reputation, inconsistent with those traits of character ordinarily involved in the commission of the crime charged may

give rise to a reasonable doubt, since the jury may think it improbable that a person of good character in respect to those traits would commit such a crime. When you weigh the testimony of the witnesses you can consider their relationship to the Government or to the defendant. You can consider their bias or interest in the outcome of the case. And the Government officer who worked on a case has some interest in seeing that the outcome is one of guilt. You are not to give greater weight of credibility to the testimony of a witness simply because of the fact that he is a Government agent.

You may evaluate the testimony of a policeman or agent in the same you evaluate the testimony of any other witness.

A defendant who wishes to testify is a competent witness. And the defendant's testimony is to be judged in the same way as that of any other witness. In evaluating the testimony of the defendant you can consider the personal interest she has and the result of the case and apply all the other tests of credibility that you use in judging other witnesses.

If it is peculiarly within the power of either

the prosecution or the defense to produce a witness who could give material testimony on an issue of the case, failure to call that witness may give rise to an inference that his testimony would be unfavorable to that party.

However, no such conclusion should be drawn by you with regard to a witness who is equally available to both parties, or where the witness' testimony would be merely cumulative.

The jury will always bear in mind that the law never imposes on a defendant in a criminal case the burden or duty of calling any witnesses or producing evidence.

Conduct of a defendant, including statements made and acts knowingly done, upon being informed that a crime has been committed, or upon being confronted with a criminal charge, may be considered by the jury in the light of all other evidence in the case in determining the guilt or innocence.

When a defendant voluntarily and intentionally offers an explanation or makes some statement intending to show her innocence, and this explanation or statement is later shown to be false, the jury may consider whether this circumstantial evidence

points to a consciousness of guilt. Whether or not evidence to the defendant's voluntary explanation or statement pointing to consciousness of guilt, and the signficance to be attached to any such evidence, are matters exclusively within the province of the jury.

A statement or an act is knowingly made or done if made or done voluntarily and intentionally and not because of mistake, or accident, or other innocent reason.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A defendant who wishes to testify is a competent witness. And her testimony should not be disbelieved merely because she is the defendant. However, in weighing her testimony you may consider the fact that the defendant has vital interests in the outcome of this case.

It is obvious, that is, to both counsel, that the critical question is whether the defendant Mrs. De Garcia knew she had cocaine. And actual knowledge that the defendant was bringing or importing

cocaine into the country is an essential element of each of the offenses charged. You may not find the defendant guilty of any count unless you find beyond a reasonable doubt that she knew she was importing or bringing cocaine into the country.

The fact of knowledge may be established by direct or circumstantial evidence just as any other fact in the case. Knowledge may be proven by the defendant's conduct since we have no way of looking into a person's mind directly. The defendant has flatly testified that she had no such knowledge. Now in this connection bear in mind that one may not wilfully and intentionally remain ignorant of a fact important and material to her conduct in order to escape the consequences of the criminal law.

If you find from all the evidence beyond a reasonable doubt, that the defendant believed she had cocaine and deliberately and consciously tried to avoid learning that there was cocaine in the baggage she was carrying in order to be able to say, should she be apprehended, that she didn't know, you must treat this avoidance of positive knowledge as the equivalent of knowledge. In other words, you may find the defendant acted knowingly if you find

that either she actually knew she had cocaine or she deliberately closed her eyes to what she had every reason to believe was the fact.

I should like to emphasize, ladies and gentlemen, that requisite knowledge cannot be established by demonstrating merely negligence or even foolishness on the part of the defendant.

I might say to you at this point that counsel for the Government and counsel for the defendant have agreed that as to value of Escudos from Chile, that 12.23 Escodos were equal to 1 United States dollar in 1972. You may use that information in connection with your deliberations.

Of course, we have had here in court all of the evidence that was introduced by both sides. Some of this evidence was introduced by the defendant and that has been marked defendant's exhibits. These are the exhibits that are in evidence. When you go into the jury room for your deliberations the clerk will give them to the jury so that the jury may use them during their deliberations. You may also take the two valises in there with you, the two pieces of luggage. You may examine them. The only item that is not here, as you may know, is the cocaine.

Of course there is a chemist's report here. It shows the purity. It shows the quantity of cocaine. And you will have that during your deliberations. If for any reason there should be any need to see the cocaine, it can be brought to court to be before the jury. But I think the jury has seen it and possibly you may not need to see it again.

(Cont'd on next page.)

You will take all of the evidence into the jury room for your deliberations.

Now, as to reasonable doubt. There are, in any case and in this one, two types of evidence from which a jury may properly find a defendant guilty of a crime. One is direct evidence such as testimony of an eye-witness and the other is circumstantial evidence which is proof of a chain of facts and circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence but simply requires that before convicting a defendant the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

A defendant is presumed innocent of a crime. Thus, the defendant, although accused begins the trial with a clean slate and with no evidence against her and the law permits nothing but legal evidence to be presented before a jury to be considered in support of any charge against the accused. So that the presumption of innocence alone is sufficient to acquit a defendant unless you the jury are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence

in the case.

It is not required that the Government prove guilt beyond all possible doubt. The test is one of reasonable doubt and reasonable doubt is doubt based upon reason and common sense. It is the kind of doubt that would make a reasonable person hesitate to act.

Proof beyond a reasonable doubt must therefore be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

You the jury will remember that a defendant is never to be convicted on mere suspicion or conjecture. The burden is always on the prosecution to prove guilt beyond a reasonable doubt. The burden never shifts to a defendant. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A reasonable doubt exists whenever, after careful and impartial consideration of all the evidence in the case, the jurors do not feel convinced to a moral certainty that a defendant is guilty of the charge. So, if the jury viewed the evidence in the case as reasonably permitting either of two conclusions,

one of innocence and the other of guilt, you the jury should of course, adopt the conclusion of innocence.

I have said that the defendant may be proven guilty either by direct or circumstantial evidence. I have said that direct evidence is the testimony of one who asserts actual knowledge of a fact such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of a defendant.

You the jury may make conclusions and inferences from the proven facts. It is not necessary that all inferences be drawn from the facts and evidence consistent only with guilt and inconsistent with every reasonable hypothesis of innocence. The test is one of reasonable doubt and should be based upon all the evidence, the testimony of the witnesses, the documents offered as to evidence and the reasonable inferences which can be drawn from the proven facts.

An inference is a deduction or conclusion which reason and common sense lead the jury to draw from the facts which have been proved.

You are to consider only the evidence in the case but in your consideration of the evidence you are not limited to the bald facts of the witnesses. On the

contrary, you are permitted to draw from the facts which you find have been proved such reasonable inferences as seem justified in the light of your own experience.

A reasonable doubt may arise not only from the evidence produced but also from a lack of evidence.

Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged a defendant has the right to rely upon the failure of the prosecution to establish such proof.

Proof of knowledge and intent: Knowledge and intent exist in the mind. Since it is not possible to look into a woman's mind to see what went on, the only way you have for arriving at a decision in these questions is for you to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and to determine from all such facts and circumstances whether the requisite knowledge and intent were present at the time in question. Direct proof is unnecessary. Knowledge and intent may be inferred from all the surrounding circumstances.

As far as intent is concerned, you are instructed that a person is presumed to intend the natural

and probable, or ordinary, consequences of his acts.

Credibility of witnesses: You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves, and it goes without saying that you should scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and his or her demeanor and manner while on the stand. Consider the witness' ability to observe the matters as to which he or she has testified and whether he or she impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently;

and innocent misrecollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves. Another test that you can use in determining the truthfulness or credibility of a witness is to use your own good common sense in addition to these essentials that I have given you. You can use your good common sense as you do in your everyday experience where you must make important decisions based upon what others tell you. When you decide to either accept or ignore the statements of others you use your common sense. Your good judgment will say to you somehow or other that whatever they say does not appear to be truthful, that somehow or other you just do not believe what they have said. That is your ability to reason, your ability to determine the truthfulness of the person you are speaking with. Likewise, your common sense should be used to determine the weight to be given the testimony

of a witness.

You take that same good common sense into the jury room, you do not leave it outside. In addition to what I have said, use your common sense as a test in exercising your good judgment and in determining whether or not this defendant is guilty of the crimes charged. It is for you to determine whether the witnesses in this case have testified truthfully, whether or not they have an interest in the case, what that interest may be and how great it is and whether or not they have told you falsehoods. This is all for you to determine.

Every witness' testimony must be weighed as to its truthfulness. If you find any witness lied as to any material fact in the case then the law gives you certain privileges. One of those privileges is that you have the right to disregard the entire testimony of that witness. If you find, however, that you can sift through that testimony and determine which of the testimony is true and which was false, then the law allows you to take the portions which were true and weigh it and disregard those portions which were false. That again is within your prerogative.

The weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of greater credence. You may find that the testimony of a small number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

You are not obliged to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness' bearing and demeanor, or because of the inherent improbability of his testimony, or for other reasons sufficient to you, that such testimony is not worthy of belief.

The Government is not required to prove the essential elements of the offense as defined in these instructions by any particular number of witnesses. The testimony of a single witness may be sufficient to convince you beyond a reasonable doubt of the existence of an essential element of the offense charged, if you believe beyond a reasonable doubt that the witness is telling the truth.

When a defendant in a case of this kind takes

the stand, which she has a perfect right to do, she is subjected to all the obligations of witnesses, and her testimony is to be treated like the testimony of any other witnesses; that is to say, it will be for you to say, remembering the substance of her testimony, the manner in which she gave it, her cross-examination, and everything else in the case, whether or not she told the truth. Then, again, it is for you to remember and you have a perfect right to do so, the interest the defendant has in the case. As she places herself as a witness, she stands like any other witness.

Evidence that at some other time a witness, other than the accused, has said or done something, or has failed to say or do something, which is inconsistent with the witness' testimony at the trial, may be considered by the jury for the sole purpose of judging the credibility of the witness; but may never be considered as evidence or proof of the truth of any such statement.

Where a witness is a defendant on trial inthe case and, by such statements or other conduct, the defendant admits some fact against her interest, then the statement or other conduct, if knowingly made or done, may be considered as evidence of the truth of

the fact so admitted, as well as for the purpose of judging the credibility of the defendant as a witness.

An act or omission is "knowingly" done, if done voluntarily and intentionally, and not because of mistake or accident or accident or other innocent reason.

Character evidence -- reputation of defendant: Where a defendant has offered evidence of good general reputation for truth and veracity, or honesty and integrity, or as a law-abiding citizen, the jury should consider such evidence along with all the other evidence in the case.

Evidence that a defendant's reputation for truth and veracity, or honesty and integrity, or as a law-abiding citizen, has not been discussed; or that those traits of the defendant's character have not been questioned, may be sufficient to warrant an inference of good reputation as to those traits of character.

Evidence of a defendant's reputation, inconsistent with those traits of character ordinarily involved in the commission of the crime charged may give rise to a reasonable doubt, since the jury may think it improbably that a person of good character in respect to those traits would commit such a crime.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

(Continued on next page.)

IG:jm
T2amR2

Charge of the Court

THE COURT (continuing): Judging the evidence: There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good common sense; consider the evidence in the case for only those purposes for which it has been admitted, and give it a reasonable and fair construction, in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If an accused be proved guilty beyond reasonable doubt, say so. If not so proved guilty, say so.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict of guilty upon anything other than the evidence in the case; and remember as well that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

The jury's recollection controls: If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection,

it is your recollection which should control during your deliberations.

Punishment:

Now, under your oath as jurors you cannot allow a consideration of the punishment which may be inflicted upon the defendant, if convicted, to influence your verdict in any way or in any sense enter into your deliberations.

The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendant solely upon the basis of such evidence and the law.

You are to decide the case upon the evidence, and the evidence alone, and you must not be influenced by any assumption, conjecture, or sympathy, or any inference not warranted by the facts until proven to your satisfaction.

You are to exclude sympathy. In reaching your verdict, you are not to be affected by sympathy for any of the parties, what the reaction of the parties or of the public to your verdict may be, whether it will please or displease anyone, be popular or unpopular or, indeed, any consideration

outside the case as it has been presented to you in this courtroom. You should consider only the evidence -- both the testimony and the exhibits -- find the facts from what you consider to be the believable evidence, and apply the law as I now give it to you to those facts. Your verdict will be determined by the conclusion thus reached, no matter whom the verdict helps or hurts.

Now, in this type of case there must be a unanimous verdict, that means all twelve of you must agree, and it goes without saying that it becomes incumbent upon you to listen to one another and to argue out the points among yourselves in order to determine in good conscience whether your fellow jurors' argument is one commensurate with yours or whether at least you can, with good conscience, agree with him. You have no right to stubbornly and idly sit by and say, "I am not talking to anyone, I am not going to discuss it," because people with common sense and the ability to reason must communicate, they must communicate their thoughts. So, anything which appears in the record and about which one of you may not agree -- talk it out amongst yourselves and then if you can't agree as to what is in the

record, well, you can ask the Court to have that portion of the testimony read back to you. You may do so by knocking on the door and giving a note in writing to the Clerk who will then present it to the Court, and I will then bring you into the courtroom.

The alternates will not deliberate in this case with the jury, so they are discharged from this case with the thanks of the Court.

Alternates one and two, when the jury, or before the jury gets up, you will go back and take your things and report to the Central Jury Room and lunch, I believe, has been ordered for the alternates too, so you may have lunch.

The Foreman will preside over your deliberations, and will be your spokesman here in Court.

In reporting your verdict to the Court, you will state as to Count One of the indictment, "Not guilty" or "Guilty" and as to Count Three of the indictment, "Not Guilty" or "Guilty". This is the way you will report it to the Court, in that fashion.

I will see the attorneys at the side.

(Side-bar discussion between Court and counsel as follows:)

THE COURT: Any exceptions to the charge?

MR. PELTZ: Yes, Judge.

Although I think it is one of the most easy to understand charges I have ever heard, I must object to a couple of things.

The defendant objects to the Court giving the indictment to the jury, particularly in as much as it contains a dismissed count, Count Two.

THE COURT: I will take it out.

MR. PELTZ: The defendant objects to the fact that reference was made to Counts One and Three when they are only getting two counts.

Now, I think this came from Government's request number three with respect to explanation --

THE COURT: Number three of the Government's request to charge?

MR. PELTZ: I think it came from that.

THE COURT: I left it out at your request and I want to say for the record that number three was left out at your request.

MR. PELTZ: Something about an explanation of a statement later shown to be false.

THE COURT: It may be number one.

Number three was left out at your request and I state that for the record.

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MR. PELTZ: It was something about an explanation or statement later shown to be false.

THE COURT: That is number one.

We went over these and I said I would give it.

MR. PELTZ: Your Honor, I don't know -- I know the gentleman who came in as a Marshal shortly after the charge, but as to the woman -- if she is sworn to look after the jury, I have no objection.

THE COURT: Which woman?

THE LAW CLERK: They are both Marshals.

MR. PELTZ: Fine. I was very much concerned.

THE COURT: I didn't see them.

THE LAW CLERK: They are both Marshals.

MR. PELTZ: All right. If she is not going with the jury, then I feel the jury will get the impression that the woman came to take my client away.

THE COURT: Why do we need an explanation? You know she is a Marshal.

MR. PELTZ: All right.

I don't think I heard your Honor cover defendant's request number two.

THE LAW CLERK: It is certainly in there.

THE COURT: Yes, it is incorporated.

MR. PELTZ: Then I missed it.

If defendant's number six was not included,

your Honor --

THE COURT: I did three pages on reasonable doubt.

THE LAW CLERK: And every eseential element of the crime. I must have heard it eight times.

THE COURT: Number six you have one paragraph and I gave you three pages.

Now, are you talking about the lady sitting right in back? She is a United States Marshal.

MR. PELTZ: Good.

My fear was that if she didn't go with the jury, they would be left with the impression that you decided they are going to convict and she was here to take her away.

THE COURT: Anything else?

MR. PELTZ: No.

Your Honor, I never put this on the record before for fear of spoiling an appeal and in this case I hope there is no appeal, but I want to say for the record that this is one of the clearest charges I have ever heard.

THE COURT: Thank you.

MR. ADLERSTEIN: The Government has no objections to any part of the charge.

(Conclusion of side-bar discussion.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-against-

ROSAURA MUNOZ DE GARCIA,

Defendant.

----------X

NOTICE OF MOTION

72 CR 1300

S I R :

PLEASE TAKE NOTICE, that the undersigned will move this Court to be held by the Hon. HENRY BRAMWELL, U.S.D.J., at a time and place to be fixed by the Court for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure in the interest of justice and based on newly discovered evidence which was suppressed by the prosecution, and for such other and further relief as law and justice require.

DATED: Brooklyn, New York
June 27, 1975

Yours, etc.

PHILIP PELTZ
Attorney for Defendant
32 Court Street
Brooklyn, New York 11201

TO:

HON. HENRY BRAMWELL
United States District Judge
Eastern District of New York
David G. Trager
United States Attorney
Eastern District of New York

6/a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA — ATTORNEY'S AFFIDAVIT

-against- — 72 CR 1300

ROSAURA MUNOZ DE GARCIA,

Defendant.

----------X

STATE OF NEW YORK)
: SS.:
COUNTY OF KINGS)

PHILIP PELTZ, being duly sworn, deposes:

1. That deponent is the attorney for the defendant having been assigned by Hon. HENRY BRAMWELL, U.S.D.J., on June 20 1975 and respectfully submits this affidavit in support of the annexed notice of motion.

2. On June 20, 1975 defendant was sentenced to a term of five (5) years imprisonment, plus a special parole term of five (5) years after having been found guilty by a jury on May 8, 1975. The gravamen of the charges against defendant were that she knowingly carried into the United States approximately ten (10) pounds of cocaine secreted in two (2) suitcases. Defendant contended that she did not have knowledge that the cocaine was contained and concealed in the false tops and bottoms of the suitcases she claimed to have innocently used. The crime is alleged to have taken place on or about November 16, 1972.

3. From the date of the arrest of defendant until the trial and presumably to this time, the suitcases in question and the cocaine have been continuously under the control and in the custody of the Government. It is alleged that on March 5, 1975 agents of the Government discovered an additional three (3) pounds of cocaine secreted in the suitcases. This new evidence was never disclosed to defendant or her counsel and was in fact suppressed. Only on June 20, 1975, upon reading the pre-sentence report did your deponent become aware of the fact of the discovery of the additional three (3) pounds of cocaine by Government agents.

4. Under the circumstances of this case, where the jury concluded that the defendant either knew or must have known that ten (10) pounds of contraband had been secreted in the suitcases, it would appear that the fact that three (3) pounds of cocaine had defied detection by trained Government agents who had had the suitcases in their custody for years, might very well have caused the jury to reach a different conclusion. Would not the fact that all of these Government specially-trained people had completely failed to detect three (3) pounds of drugs during the period of time and under the condition prevailing have affected the judgment of the jury?

5. It is respectfully submitted that the judgment of conviction should be vacated and either the indictment dismissed or a new trial required it being apparent that had this evidence not been suppressed by the Government a jury in all likelihood would have expressed a reasonable doubt and a conviction would have been avoided.

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PHILIP PELTZ

Sworn to before me this

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against - 72 CR 1300

ROSAURA MUNOZ DE GARCIA,

Defendant.

- - - - - - - - - - - - - - - - - - - X

GOVERNMENT'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR A NEW TRIAL.

Respectfully submitted,

DAVID G. TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

LEE ALAN ADLERSTEIN
Assistant U.S. Attorney
(Of Counsel)

FACTS

After a four day jury trial held before the Court from May 5 through May 8, 1975, the defendant Rosaura Munoz DeGarcia was found guilty of importing approximately ten (10) pounds of cocaine into the United States, 21 U.S.C. §952(a), and of possessing the same ten (10) pounds with intent to distribute it, 21 U.S.C. §841(a)(1). The defendant is presently serving the term of imprisonment for five years imposed by the Court on June 20, 1975. A notice of appeal has been filed and the Court of Appeals has set August 14, 1975 and September 10, 1975 as the dates defendant's and Government's briefs are due respectively.

Defendant now moves for an order vacating the judgment of conviction entered on June 20, 1975 and requiring that a new trial be held pursuant to Rule 33 of the Federal Rules of Criminal Procedure.

In an affidavit filed with defendant's motion papers, the defense attorney Phillip Peltz alleges that the Government "suppressed" the existence of an additional quantity of cocaine, such "suppression" constituting a denial of an opportunity for the defense to argue that Government agents had failed to detect some of the cocaine Mrs. DeGarcia carried

into the United States. The Government, through the following discussion, will show that the defense allegations are farfetched and that the defense motion is groundless in law.

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I. The Government did not suppress the additional cocaine.

The Government has filed, with this memorandum, an affidavit of John Fish, a Special Agent of the United States Customs Service. The affidavit details the instructions given to Agent Fish by the United States Attorney's Office whereby an expert retained by the defense examined both suitcases at Customs headquarters shortly before the day the trial began. In addition, as the Court is well aware, the suitcases were introduced into evidence early in the trial.

Further, the Assistant United States Attorney who prosecuted the case explicitly stated on the record at an early stage of the trial:

> "One other thing I would like to call your Honor's attention to is the fact that in one of the suitcases there very well may be some cocaine still there in one of the secret compartments of the suitcase. I just wanted to call it to the Court's attention." (Proceedings of May 5, 1975, page 41, lines 19-24.)

The Government submits that any obligation to disclose the presence of additional material in one of the suitcases, which was not determined to be cocaine until after the conclusion of the trial, was fully met by these disclosures.

II. The additional cocaine was not "Brady" material.

Though the defense does not, in motion papers, mention Brady v. Maryland, 373 U.S. 83 (1963), the Government presumes that the instant motion is predicated on an argument that the Government failed to abide by the Brady requirement that evidence favorable to an accused be turned over to the defense. The Government submits that the additional cocaine eventually found in one of the suitcases, was not material which could be deemed to have been potentially favorable to the defense. The fact that the quantity of cocaine imported was actually larger than the amount for which the defendant was charged could only have dramatized the seriousness of the crime, the large market value of the drugs and the unusual weight of the suitcases defendant was carrying.

The Government is unaware of any case stating that additional evidence such as that with which this motion is concerned, is Brady material. The Government submits that the additional cocaine is additional evidence damaging to the defense and nothing more.

CONCLUSION

Defendant's motion should be denied in all respects.

Dated: Brooklyn, New York
July 30, 1975

Respectfully submitted,

DAVID G. TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

LEE ALAN ADLERSTEIN
Assistant U.S. Attorney
(Of Counsel)

RJD:LAA:sj
F# 725,465

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

ROSAURA MUNOZ DE GARCIA,

Defendant.

AFFIDAVIT IN RESPONSE TO DEFENDANT'S NOTICE OF MOTION

72 CR 1300

- - - - - - - - - - - - - - - - - - - X

STATE OF NEW YORK)
COUNTY OF KINGS) SS:
EASTERN DISTRICT OF NEW YORK)

JOHN FISH, being duly sworn, deposes and says:

1. I am a Special Agent of the United States Customs Service and have held this position since February 18, 1974.

2. I am assigned to the Regional Director of Investigations, United States Customs Service, 6 World Trade Center, New York, New York.

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3. On or about March 10, 1975 I was assigned to assist the United States Attorney for the Eastern District of New York, as case agent for the trial of Rosaura Munoz DeGarcia, 72 CR 1300. I exercised the duties of case agent through the completion of the trial. 7/a

4. On or about the latter part of March 1975, I spoke to Lee Adlerstein, an Assistant United States Attorney for the Eastern District of New York and was instructed by him to make available to Phillip Peltz, the defense attorney in this case, all documents and physical exhibits seized by the United States Customs Service from Rosaura Munoz DeGarcia.

5. On or about the latter part of April 1975, I was informed by Mr. Adlerstein that the trial was to commence on a date in April, and that the two pink Samsonite suitcases seized from Mrs. Garcia and in the possession of the Customs Service were required in Court as evidence. Mr. Adlerstein also informed me that Mr. Peltz had requested that an expert analyst retained by him be permitted to inspect the suitcases prior to the commencement of the trial, and that Mr. Adlerstein had agreed with

7/B

Mr. Peltz to allow such inspection at the courthouse immediately prior to trial. I replied there would be no problem with this arrangement, and had the suitcases brought to Mr. Adlerstein's office on the date the trial was to commence.

6. When the suitcases were brought to Mr. Adlerstein's office I was informed that the trial had been adjourned for one week. Mr. Adlerstein informed me that it would be best to take the suitcases back to Customs headquarters and to allow the expert retained by Mr. Peltz to examine the suitcases there.

7. On or about the last part of April 1975 an expert for Mr. Peltz arrived at the United States Customs House, accompanied by Mrs. Mellor, a law associate of Mr. Peltz. The expert was handed the suitcases in the presence of myself and Mrs. Mellor and no time limit was given for the length of his examination. The lighting was good and the expert had ample space in which to work. After approximately five to seven minutes of examining the suitcases in the presence of myself and Mrs. Mellor, during which time the expert appeared to look both into the inside and at the outside of the suitcases, the expert voluntarily ceased his examination and he and Mrs. Mellor left the Customs House.

8. The additional cocaine later found in one of the suitcases had not been removed from the suitcase at the time of the foregoing inspection. 72a

_____

JOHN FISH
Special Agent
United States Customs Service

Sworn to before me this
day of July 1975

_____

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THE CLERK: Criminal motion in matter of United States of America versus Rosaura Munoz Degarcia.

MS. MELLOR: I thought Mr. Peltz would be out of town today. However, he returned yesterday but with your Honor's permission if I may I will appear before the Court.

THE COURT: I will hear you on the motion.

MS. MELLOR: This is a motion brought under Rule 33 on the grounds of newly discovered evidence. It has been found, we are not sure when, that there were three additional pounds of cocaine in the suitcases.

THE COURT: In addition to the ten there.

MS. MELLOR: In addition to the ten.

THE COURT: There were 13 pounds there?

MS. MELLOR: There were 13 pounds. The three additional pounds were not discovered until either May 5 or March 5, or after the trial. I am not really sure when.

But I think the point is that it is not so much there were 13 pounds instead of 10 pounds but the fact that the Government, in possession of these suitcases for all that time, did not discover these three pounds until two years after the

suitcases were seized.

THE COURT: You say the fact there was more rather than less in some way shows the defendant to be not guilty in some way?

MS. MELLOR: If I may explain my theory on this, your Honor.

THE COURT: Surely.

MS. MELLOR: The defendant was seized at Customs carrying the suitcases. It was alleged there were 10 pounds of cocaine in the suitcases. The defense was she did not know the cocaine was in the suitcases, one of the reasons being she never had the suitcases before in her life.

It seems to me the Customs agents and the people who received the suitcases should have known from the extra weight that there was extra cocaine in the suitcases.

THE COURT: You are saying the Government never knew about the additional three pounds?

MS. MELLOR: That seems to be so.

THE COURT: You say they should have known.

MS. MELLOR: I think they should have known. I think if we knew about it --

THE COURT: How would it help the defendant's case or alter the defendant's position?

MS. MELLOR: It would strengthen the defendant's position from the weight she should not have known there was cocaine in the suitcases. Besides which, on the suppression hearing Agent Swinemore testified also at trial that one of the reasons he gave for having probable cause was that he emptied one side of the suitcase and felt it and it felt heavy. He said he knew the construction of Samsonite suitcases and was familiar with that.

THE COURT: Did he tell us what the weight was?

MS. MELLOR: The weight of the --

THE COURT: Of the Samsonite suitcases.

MS. MELLOR: It was not in the record.

THE COURT: Did anybody ask him?

MS. MELLOR: No, your Honor.

THE COURT: No, I am sure nobody did ask that. I know that, I was here.

MS. MELLOR: But he did testify that one side felt heavy. I think that was a very important part in the reasonable cause --

THE COURT: I do not see how the jury would have arrived at anything different if they knew it was 13 pounds instead of 10. I do not see how this could have altered the jurors' thinking as to the fact the defendant was guilty.

MS. MELLOR: They could not have known it was 13 pounds instead of 10. They would have known 10 pounds were discovered in 1972 and three additional pounds discovered in 1975. It certainly would have gone to the credibility of the agents who said they emptied the suitcases, that is to the credibility of the agent who said the suitcases felt heavy.

THE COURT: Is there any normal weight for a suitcase that you know of? Is that the defendant's position? Is there any normal weight?

MS. MELLOR: I would not know of a normal weight, your Honor. It is not my job to ascertain whether there is possibly drugs in the suitcases.

THE COURT: I took a trip with my wife. My wife's is heavy and mine is light by themselves. Now what difference could that possibly make? She was complaining about the weight of hers empty and the fact the weight of mine is light. What difference this could possibly make in this trial I cannot see. But perhaps there is something to it.

MS. MELLOR: This would make a difference, your Honor, because the people who look into the suitcases, the agents, and that is their job, they are supposed to know how much a suitcase will weigh. The agent testified it was heavy. He must have had

some basis for his testimony and he said he was familiar with the construction of Samsonite suitcases. He testified it did not feel like a Samsonite suitcase.

THE COURT: The real problem before the Court was whether or not the defendant know or should have known.

MS. MELLOR: Exactly.

THE COURT: And this was the problem and the weight was something apart and aside from this as to what was in the suitcases and evidently the jury believed that this defendant should have known that 10 pounds of cocaine were in that suitcase.

MS. MELLOR: Well, they found she should have known that 10 pounds of cocaine was in the suitcase when in fact 13 pounds were in the suitcases. One of the ways she should have known logically would have been from the weight and there was one third in there which the agents did not find.

THE COURT: I will hear Mr. Adlerstein on this.

MR. ADLERSTEIN: Your Honor, I believe that we have submitted a memorandum to your Honor and the United States has stated in the memorandum that full disclosure was made to the defense on this matter. The suitcases were made available for the inspection

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of an expert by the defense and that in the early stages of the trial, shortly after I was informed there might have been more cocaine in the suitcases, I stated in open Court and the Government will further contend, your Honor, that the Government agents who discovered the suitcases were doing the job. The important fact here is that they discovered there were 10 pounds of cocaine carried in by the defendant and your Honor will recall the testimony of Inspector Swinemore when he stated how he found the 10 pounds of cocaine. I think your Honor will recall the way he found it was very logical.

THE COURT: He put his hands into the sides of the suitcases and the way the suitcases had the cocaine in it he knew immediately there was something in the suitcase. That is what he said, he put his hand right into the suitcase. Anything further?

MR. ADLERSTEIN: Just that I do not see how an extra three pounds would have affected Agent Swinemore's credibility since it was his job to see that the drugs were there and he found them.

THE COURT: Yes.

MS. MELLOR: Your Honor, reading from

Swinemore's testimony on the hearing he said: "I felt the bottom of the first suitcase."

THE COURT: Was this on trial?

MS. MELLOR: This was at the hearing, your Honor, page 17 of the transcript: "I felt the bottom of the first suitcase and it felt unusually thick, particularly where the side joins the bottom. Now I emptied one portion of the suitcase so it was completely empty. Then I felt the weight of this half of the suitcase and it felt heavy as well as feeling thick."

He testified similarly on the direct trial that it felt heavy. Then I believe he demonstrated how he lifted one side and it felt heavy.

As to Mr. Adlerstein's statement on the trial he said on page 41 that there might well have been some cocaine in the suitcases.

MR. ADLERSTEIN: In one of the suitcases.

MS. MELLOR: In one of the suitcases.

THE COURT: Yes, I think you brought it up during the trial.

MS. MELLOR: There is something else that even Mr. Adlerstein may not know about. Before I went I called Mr. Fish and asked him if we might see them, the suitcases, and he said, "I think there might be

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cocaine in them," or something to that effect. I thought he meant the cocaine, the 10 pounds. At this point in the trial where it was said there may be some cocaine, especially in view of the chemist's later testimony that the cocaine was in paper bags and they were breaking, I think the reasonable inference would be that there would be a little cocaine, traces of cocaine. I think if your Honor were aware that these suitcases were sitting for these days with three pounds of cocaine in them you would have done the same thing you did with the cocaine itself, which was to get it out of the courtroom. I do not think anyone assumed there had been three pounds of cocaine, that is more than a little, I think it is a significant amount of cocaine.

THE COURT: The suitcases themselves were not light suitcases, they were heavy suitcases and really the issue which was before the jury mainly was whether or not the defendant knew and they found that, evidently from the verdict, the defendant knew.

Whether the defendant knew it was 10 pounds or 13 pounds, I do not think there would have been any change as to what their position would be or what the jury did with it. I do not see any way it

would have changed it.

MS. MELLOR: I feel if they knew that 10 pounds had been discovered that night and three additional pounds had been discovered two years later there might well have been a reasonable doubt in their mind that she did not know from the weight of the suitcases.

THE COURT: They found she knew about at least 10 pounds. That would be the effect of their verdict in this case, that she had knowledge of at least 10 pounds and the fact that they did not find the additional three pounds I do not see how it could alter their judgment.

MS. MELLOR: Your Honor, I do not know what was in the jury's mind but if they felt that she knew there was 10 pounds of cocaine in the suitcases it is because the suitcases were too heavy, too heavy by 10 pounds. I think if it was brought out it was actually three more pounds, which the agent who carried the suitcases around did not even suspect--

THE COURT: Well, your position must be that people know the weight of the suitcases they carry. How can anyone know the weight of the suitcases they carry? How can anyone know the weight? That has to be your position, theyknow the weight. Is that

correct?

MS. MELLOR: They would know the approximate weight.

THE COURT: How does one know the weight of two cases they carry? How by any stretch of the imagination unless they actually put it on the scale and weigh it.

MS. MELLOR: I think, your Honor, if a person has an empty suitcase and has a suitcase with 10 pounds with something in it, there would be a noticeable difference in weight.

THE COURT: Well, she just took these suitcases and put thing in them. I don't know that she knew the wieght. I do not know she had any idea as to the weight. She said she did not know anything was in there.

MS. MELLOR: It is our contention she had no idea.

THE COURT: She said she did not know anything was in there. The jury verdict would mean they felt she knew or should have known. I think that is what the entire case is about and not the weight.

MS. MELLOR: Well, I just think that the weight speaks very strongly to it and the jury should have known as part of the verdict.

THE COURT: It may be but I do not agree with you. Motion denied. Mr. Adlerstein, can you submit an order for that on notice?

MR. ADLERSTEIN: Yes, your HOnor.

THE COURT: Thank you.

* * *

RJD:LAA:sj
F# 725,465

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

ROSAURA MUNOZ DE GARCIA,

Defendant.

- - - - - - - - - - - - - - - - - - - X

ORDER

72 CR 1300

The defendant having moved, pursuant to Rule 33 of the Federal Rules of Criminal Procedure, for an order vacating the judgment of conviction entered by this Court on June 20, 1975 and for the holding of a new trial, and the Court having duly considered such motion, it is hereby

ORDERED that the said motion be and hereby is denied in all respects.

Dated: Brooklyn, New York
August , 1975

HENRY BRAMWELL
United States District Judge

84a

United States of America vs.

United States District Court for

DEFENDANT: ROSAURA MUNOZ DE GARCIA

EASTERN DISTRICT OF NEW YORK

M' FILMED

DOCKET NO. 72 CR 1300

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH 6 DAY 20 YEAR 1975

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[XXXX] WITH COUNSEL Philip Peltz, Esq.
(Name of counsel)

PLEA

[X] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
JUN 20 1975
TIME A.M.
P.M.

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged
[XXX] GUILTY. in Counts 1 and 3

Defendant has been convicted as charged of the offense(s) of violating T-21 U.S.C. Sec. 841(a)(1) 960(a)(1) and 952(a), in that on or about November 16, 1972, the defendant did knowinglya and intentionally possess with intent to distribute and did knowingly and intentionally import approximately 4,519 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance into the United States from Chile

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 5 years plus a special parole term of 5 years on count 1 pursuant to T-18, U.S.C. Sec. 4208(a)(2) and 5 years plus special parole term of 5 years on count 3 pursuant to T-18, U.S.C. Sec. 4208(a)(2). Sentence on count 3 to run concurrent with sentence imposed in count 1.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☑ U.S. District Judge

☐ U.S. Magistrate

Henry Bramwell

Date June 2d 75

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